

Labor Rights

KLP seeks to apply a consistent and principled approach to all of its exclusion decisions. To ensure that we handle similar cases consistently, we rely on KLP's previous divestment decisions, as well as recommendations on exclusion from the Council on Ethics for the Government Pension Fund – Global (GPFG).¹

KLP makes exclusion decisions based on whether there is an unacceptable risk for ongoing or future violations, not on past violations alone. This approach highlights that KLP's goal is not to "punish" companies, but to ensure that KLP does not contribute to labor rights abuses through its investments.

Labor rights or human rights?

KLP includes labor rights as a separate category from human rights, consistent with its status as a separate pillar under the UN Global Compact.² This approach differs from that of the Ethical Guidelines for the GPFG, which incorporate labor rights cases into the exclusion criterion for serious or systematic human rights violations. This distinction is more important in theory than in practice, however, as serious or systematic labor rights abuses often overlap with human rights violations. For example, forced labor is a violation of both labor rights, under the ILO Forced Labor Convention (No. 29),³ and human rights, under the International Covenant on Civil and Political rights⁴ and the International Covenant on Economic, Social, and Cultural Rights.⁵ Child labor also spans both categories. As a result, KLP's list of excluded companies often includes cases under the human rights category that also constitute labor rights violations.

Perhaps the clearest example of violations that KLP typically classifies under the labor rights category are severe or systematic violations of the right to collective bargaining. Although freedom of association is enshrined in international human rights conventions, the ILO Fundamental Conventions address the topic with far greater specificity.

International standards

The main standards for labor rights are those contained in the ILO Fundamental Conventions. We expect companies to adhere to international standards, even if local law contains no such protections.

Key considerations

Given the significant overlap between labor rights and human rights cases, the key questions for human rights evaluations, as described in that policy document, apply to the labor rights category as well. The link between the company's activities and the violation is generally more straightforward in labor rights cases than human rights cases. Nevertheless, cases involving labor rights violations in the supply chain require a more thorough analysis of complicity, including the steps the company has taken to prevent, detect, and remediate any abuses.

In our experience, labor rights violations cases tend to involve systematic violations more often than serious violations. For example, while the existence of an individual strike would not normally give rise to an exclusion decision, a pattern of conflict with organized labor over time and/or across various jurisdictions would suggest a company faces a risk of systematic labor rights abuses.

Finding independent, credible documentation of labor rights abuses is often a challenge as well – although one which is by no means unique to this category of violation. Cases involving disputes over which of two competing unions represents the affected workers is one common example in which independent information may be

¹ <https://www.regjeringen.no/no/dokumenter/nou-2003-22/id118914/>

² <https://www.unglobalcompact.org/what-is-gc/mission/principles>

³ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C029:NO

⁴ <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁵ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

difficult to obtain, as well as cases from jurisdictions in which government reports or court judgments are hardly unbiased sources of information.

Examples:

Association to anti-union practices

KLP excluded Toyota Motors from 2006 to 2013, based on an unacceptable risk of anti-union practices in the company's operations in the Philippines. During that period, Toyota was involved in a court case in the Philippines and scrutinized by the International Labor Organization's Committee of Freedom of Association due to allegations of illegal worker dismissals and other anti-union activities. KLP revoked the exclusion after Toyota resolved its conflict with the Toyota Motor Philippines Company Workers' Association. The company also improved its policy on labor rights by recognizing a commitment to respect the ILO Fundamental Conventions.⁶

Unacceptable risk of systematic labor rights violations

KLP excluded Wal-Mart Stores in 2003. A constant stream of reports in the media and court cases indicated the existence of systematically poor working conditions at Wal-Mart. The company is criticized for repeated violations of labor rights in several areas. The criticism involves child labor, factories that exploit workers, discrimination against women and efforts to resist unionization. One example is that 67,500 former and current employees in 2008 won a court case in which Wal-Mart was found to have systematically withheld employee wages. The judgement was handed down from the highest court in Massachusetts, and more than 30 similar cases against Wal-Mart were active in other American states. Another example is a class action lawsuit where 1.6 million employees and former employees accused the company of systematically discriminating against women.

⁶ <http://blogg.klp.no/2013/12/derfor-investerer-vi-toyota-igjen/>